(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION No. 2256/03

PETITIONER : Chhatarlal, son of Gangaram,aged about 44 years, resident of Village-Gorra,Tehsil and District-Raigarh,(C.G.)

V E R S U S

RESPONDENTS : 1. Rewti,daughter of Laxman, aged about 50 years, resident of Village-Gorra, Tehsil and District-Raigarh,(C.G.)

2. Dol Kunwar,wife of Khageshwar, aged about 65 years,resident of Village.Birhabhatha,Tehsil-Dabhra, District-Janjgir-Champa, presently residing at Village-Gorra,Tehsil and District-Raigarh, (C.G.)

: 3. Hanskumari,wife of Hemprasad, aged about 60 years,resident of Village-Ghodidipa,Tehsil and District-Raigarh,(C.G.).

: 4. Khushi Ram,sonof Satyanand, resident of Village-Gorra, Tehsil and District-Raigarh,(C.G.)

: 5. Bansidhar,son of Dhansingh,resident of Village-Gorra,Tehsil and district-Raigarh,(C.G.)

: 6. Sitia Devi,widow of Nanki

: 7. Tarachand ,son of Nanki,

: 8. Ghanshyam,son of Nanki, Respondents 6 to 8 are residents of Village-Gorra,Tehsil and district-Raigarh,(C.G.).

: 9. State of Chhattisgarh,through its Collector,Raigarh, District-Raigarh,(C.G.)

P. R. No. 1956/03
Presented by Shri Gautam Khetpal
dated 12.09.03

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12/12/03
CLERK TO A.G. BILASPUR

शपथ आयुक्त
एम.के शुक्ला
बिलासपुर (छ.ग.)
12-9-03
बिलासपुर तहसील कोर्ट

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 2256/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

26-08-2003

Shri Prashant Mishra, counsel for the petitioner.

Miss Chitra Shrivastava, Govt. Advocate, for the State/respondent No.9.

Heard.

By petition under Article 226/227 of the Constitution of India the petitioner has challenged the order dated 16-09-2003, passed by the First Additional Sessions Judge, Raigarh in Misc. Civil Appeal No.15/2002, whereby his application under Order 39 Rule 1 and 2 of C.P.C. has been dismissed.

The case of the petitioner is that he preferred a suit for declaration and permanent injunction in relation to the lands/house described in the schedule on pleadings inter alia that the property has been divided between the sons of common ancestors and the house including kitchen, garden etc. were also divided in four parts and the disputed land fell in his father's share. Respondents No.1 to 3 being cousin brothers used to reside in a room falling in his father's share. However, after 06-03-2000 they started demolishing the walls to raise new construction, which was objected to by the petitioner. The defendants filed written statements and denied the suit allegations. According to them the area in their

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

their possession belongs to their father Laxman Patel and they are entitled to continue to remain in possession and raise construction. Defendant No.5 preferred a separate written statement supporting the case of the plaintiff. The plaintiff preferred an application under Order 39 Rule 1 and 2 of C.P.C. for restraining the defendants from raising any construction on the disputed land. The said application was rejected by the trial Court and on an appeal preferred by the plaintiff the same was upheld by the appellate Court.

I have heard learned counsel for the parties.

Learned counsel for the petitioner very fairly submitted at this stage that in view of the concurrent findings of both the Courts, he does not want to argue the case on the merits. However, since the petitioner is claiming the disputed land to be his land and if during the pendency of the suit any construction is raised on the disputed land and ultimately if the petitioner succeeds in the suit, in that event any construction raised on the disputed land will unnecessarily create interest and complications in the matter. He submitted a direction to the effect that any construction raised during the pendency of the suit will be subject to the out come of the suit may kindly be made. The request of the learned counsel for the petitioner appears to be reasonable since the civil suit is pending regarding

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WPRO.2256/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

disputed land and if such observation is made that is not going to effect any interest of the defendants.

Having heard learned counsel for the parties and having regard to the facts and circumstances of the case the petition is dismissed with the observation that if any construction is raised on the disputed land during the pendency of the suit that will be subject to the out come of the suit.

Parties are entitled for the certified copy of the order.

Sd/-
L.C.BHADOO
Judge